

Applicant: Don Fishbein  
Serial No.: 10/799,197  
Filed: March 12, 2004  
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**REMARKS**

Claims 30-45 are pending and under examination. Applicant has herein cancelled claims 31, 35 and 45 without disclaimer or prejudice to applicant's right to pursue the subject matter of these claims in the future. Applicant has hereinabove amended claims 30 and 43. Support for the amendments to claim 30 can be found in the specification as originally filed at, *inter alia*, page 22, lines 14-16; page 10, lines 4-8. Support for the amendments to claim 43 can be found in the specification as originally filed at, *inter alia*, page 13, lines 17-19. Accordingly, applicant requests entry of this Amendment.

**December 6, 2010 Teleconference With Examiner Alicia Hughes  
And Supervisory Examiner Ardin Marschel**

Applicant thanks Examiners Hughes and Marschel for extending the courtesy of a December 6, 2010 teleconference with Brian Amos of the undersigned's office. During the December 6, 2010 teleconference, Examiner Hughes stated to Brian Amos that the objection to priority made in the prior Office Action, although not repeated explicitly in the current Office Action, was nevertheless maintained. In addition, Examiners Marschel and Hughes discussed with Brian Amos that applicant's claimed December 5, 1996 priority date would be recognized by the Examiners if independent claim 30 was amended to more closely reflect the experimental results recited in the specification of the priority document, namely, U.S. Provisional Application No. 60/032,414. Specifically, Examiner Marschel indicated that independent claim 30 should recite the dosage of oxandrolone administered and the length of administration which produces

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the claimed effect. Examiner Marschel also indicated that dependent claim 43 should recite the actual protein intake. Applicant has amended the claims hereinabove to reflect Examiner Marschel's comments.

#### **Priority**

In the October 27, 2010 Office Action the Examiner objected to the currently claimed priority and asserted that U.S. Provisional Application No. 60/032,414 does not support the invention as claimed. The Examiner asserted that the filing date of the present application, i.e. March 12, 2004, is considered the priority date of the claimed invention.

In response, applicants have amended the claims to recite features supported in U.S. Provisional Application No. 60/032,414, filed December 5, 1996. More specifically, applicant has amended independent claim 30 and dependent claim 43 consistent with the comments made by Examiner Marschel in the December 6, 2010 teleconference summarized hereinabove. Accordingly, applicant understands that the claims as amended will be considered by the Examiner to be entitled to a December 5, 1996 priority date.

#### **Rejection of Claims 30, 42-45 and 47 Under 35 U.S.C. §102(a)**

Based on the Examiner recognizing only a March 12, 2004 priority date for the claimed invention, the Examiner rejected claims 30, 42-45 and 47 under 35 U.S.C. §102(a) as anticipated by Demling, *Burns* 29:793-797 (2003) ("Demling").

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In response, applicant respectfully traverses the Examiner's rejection. The invention as currently claimed is supported by U.S. Provisional Application No. 60/032,414 and entitled to applicant's claimed December 5, 1996 priority date as discussed hereinabove. As such, Demling is not prior art and, accordingly, the rejection should be withdrawn.

**Rejection of Claims 30-40 Under 35 U.S.C. §103(a)**

Based on the Examiner recognizing only a March 12, 2004 priority date for the claimed invention, the Examiner rejected claims 30-40 under 35 U.S.C. §103(a) as obvious over Demling in view of Berger, U.S. Patent No. 6,090,799 ("Berger").

In response, applicant respectfully traverses the Examiner's rejection. As amended herein the invention as currently claimed is supported by U.S. Provisional Application No. 60/032,414 and is entitled to applicant's claimed December 5, 1996 priority date. As such, Demling is not prior art.

Berger, cited by the Examiner for disclosing administration of oxandrolone, does not teach or suggest administration of oxandrolone for promoting weight gain after weight loss resulting from post-burn catabolism. Berger also does not render obvious a method wherein the weight gained is maintained at eight weeks after discontinuation of three weeks of oxandrolone administration. Accordingly, the obviousness rejection should be withdrawn.

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**Rejection of claims 30 and 41 Under 35 U.S.C. §103(a)**

The Examiner also rejected claims 30 and 41 under 35 U.S.C. §103(a) as allegedly obvious over Demling in view of Labrie et al., U.S. Patent No. 5,434,146 ("Labrie").

In response, applicant respectfully traverses the Examiner's rejection. The invention as currently claimed is supported by U.S. Provisional Application No. 60/032,414 and is entitled to applicant's claimed December 5, 1996 priority date. As such, Demling is not prior art.

Labrie, cited by the Examiner for disclosing administration of anabolic steroids in a sustained release formulation, does not teach or suggest administration of oxandrolone for promoting weight gain after weight loss resulting from post-burn catabolism. Labrie also does not render obvious a method wherein the weight gained is maintained at eight weeks after discontinuation of three weeks of oxandrolone administration. Accordingly, the obviousness rejection should be withdrawn.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone them at the number provided below.